

RESEARCH APPENDIX

Date Transfer Requested: 11/30/2018 (Per: CMH)

☞ **Appendix C** ... has been added to the **2017 LRB-6073**

Appendix A ☞ LRB 17-6001

Appendix B ☞ LRB 17-6004

Appendix C ☞ LRB 17-6039

Appendix D ☞ LRB 17-6040

Appendix E ☞ LRB 17-6041

Appendix F ☞ LRB 17-6042

Appendix G ☞ LRB 17-6043

Appendix H ☞ LRB 17-6058

2017 DRAFTING REQUEST

Bill

For: **Robin Vos (608) 266-9171** Drafter: **tdodge**
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 Date: **11/20/2018** May Contact:
 Same as LRB:

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Pre Topic:

No specific pre topic given

Topic:

Codify drug testing rule

Instructions:

Codify DHS 38 in statutes

Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?	tdodge 11/23/2018	anienaja 11/23/2018			
/P1	tdodge 11/28/2018	anienaja 11/29/2018	dwalker 11/26/2018		
/P2			dwalker 11/29/2018		

FE Sent For:

<END>

Chapter DHS 38

SUBSTANCE ABUSE SCREENING, TESTING AND TREATMENT FOR CERTAIN DEPARTMENT EMPLOYMENT AND TRAINING PROGRAMS

DHS 38.01	Purpose.	DHS 38.06	Requiring participation in treatment.
DHS 38.02	Definitions.	DHS 38.07	Effect of completing, voluntarily withdrawing, or being terminated from an employment and training program.
DHS 38.03	Information about the requirement for controlled substance abuse screening, testing, and treatment.	DHS 38.08	Confidentiality of records.
DHS 38.04	Administering and evaluating a controlled substance abuse screening questionnaire to determine possible substance abuse.	DHS 38.09	Appeals.
DHS 38.05	Requiring a test for the use of a controlled substance.	DHS 38.10	Payment of costs related to screening, testing and treatment.

DHS 38.01 Purpose. The purpose of this chapter is to establish a process to screen for, and, if appropriate, test for the use of controlled substances by applicants for certain employment and training programs administered by the department, and to refer individuals determined to be abusing a controlled substance to a treatment provider for a substance abuse assessment and evaluation and appropriate treatment as required by s. 49.79 (9) (d), Stats.

History: CR 17-005; cr. Register May 2018 No. 749, eff. 6-1-18.

DHS 38.02 Definitions. In this chapter:

(1) "Able-bodied adult" has the meaning given in s. 49.79 (1) (am), Stats.

(2) "Administering agency" means an administrative agency within the executive branch under ch. 15, Stats., or an entity that contracts with the State such as, single county consortia under s. 49.78 (1r), Stats.; multicounty consortia under s. 49.78 (1) (br), Stats.; or a tribal governing body under s. 49.78 (1) (cr), Stats.

(3) "Confirmation test" or "confirmed test" means an analytical procedure used to quantify a specific controlled substance or its metabolite in a specimen through a test that is different in scientific principle from that of the initial test procedure and capable of providing requisite specificity, sensitivity, and quantitative accuracy to positively confirm use of a controlled substance.

(4) "Controlled substance" or "substance" has the meaning given in s. 49.79 (1) (b), Stats.

(5) "Department" means the department of health services.

(6) "Employment and training program" or "food stamp employment and training program" or "program" in this chapter has the meaning given in s. 49.79 (9), Stats.

(7) "Food stamp program" has the meaning under s. 49.79 (1) (c), Stats.

(8) "Individual" means an able-bodied adult who is subject to the work requirements specified in s. 49.79 (10) (a), Stats., and intends on meeting the work requirements through participation in the food stamp employment and training program.

(9) "Medical review officer" means a licensed medical provider employed by or providing services under contract to a drug testing vendor who has knowledge of substance abuse disorders and laboratory testing procedures and who has the necessary training and experience to interpret and evaluate an individual's positive test result in relation to the individual's medical history and valid prescriptions.

(10) "Metabolite" means a chemical present in the body when a controlled substance is being broken down through natural metabolic processes that can be detected or measured as a positive indicator that a controlled substance associated with the metabolite has been used.

(11) "Prescription" means a current order for a controlled substance that indicates the specific regimen and duration of the

order, and that is transmitted electronically or in writing by an individual authorized in this state to order the controlled substance.

(12) "Qualified drug testing vendor" means a laboratory certified by the centers for medicare & medicaid services under the Clinical Laboratory Improvement Amendments of 1988 (CLIA) to collect a specimen, carry out laboratory analysis of the specimen, store the specimen for confirmatory testing if required, complete confirmatory testing, and provide review by a medical review officer.

Note: For information about CLIA, see: <https://www.cms.gov/Regulations-and-Guidance/Legislation/CLIA/>. To obtain an application for CLIA certification contact the Wisconsin Department of Health Services Division of Quality Assurance at: <https://www.dhs.wisconsin.gov/regulations/index.htm>

(13) "Screening" means completion of a questionnaire specified by the department, regarding the individual's current and prior use of controlled substances.

(14) "Specimen" means tissue, fluid, or a product of the human body required to be submitted by an individual for testing under this chapter.

(15) "Trauma-informed" means operationalizing the understanding of the science of Adverse Childhood Experiences (ACEs), toxic stress, trauma, and resilience into organizational culture, policies, programs and practices. Operationalizing TIC means an adherence to trauma-informed principles such as safety, trustworthiness and transparency, peer support, collaboration and mutuality, empowerment, and cultural, historical, and gender issues.

Note: "TIC" refers to trauma-informed care.

(16) "Treatment" means services that are conducted under clinical supervision to assist an individual through the process of recovery from controlled substance abuse and may include screening, application of approved placement criteria, intake, orientation, assessment, individualized treatment planning, intervention, individual or group and family counseling, referral, discharge planning, after care or continuing care, recordkeeping, consultation with other professionals regarding treatment services, recovery and case management, crisis intervention, education, employment, and problem resolution in life skills functioning.

(17) "Treatment program" means a program certified to provide treatment for controlled substance abuse as a medically managed inpatient service under s. DHS 75.10, a medically monitored treatment service under s. DHS 75.11, a day treatment service under s. DHS 75.12, an outpatient treatment service under s. DHS 75.13, a transitional residential treatment service under s. DHS 75.14, a narcotic treatment service for opiate addiction under s. DHS 75.15, or psychosocial rehabilitation services as approved by the department.

(18) "Treatment provider" or "provider" means a provider of treatment services for controlled substance abuse certified by the department under the provisions of ch. DHS 75, a provider certi-

fied under s. 440.88, Stats., or other licensed professional who meets the requirements of ch. SPS 161.

History: CR 17-005: cr. Register May 2018 No. 749, eff. 6-1-18; correction in (15) under s. 35.17, Stats., Register May 2018 No. 749, eff. 6-1-18.

DHS 38.03 Information about the requirement for controlled substance abuse screening, testing, and treatment. An administering agency shall provide information in a format approved by the department to any individual who expresses interest in or is referred to participate in an employment and training program to explain the requirement for participants in certain employment and training programs to undergo screening, testing, and treatment for abuse of controlled substances.

History: CR 17-005: cr. Register May 2018 No. 749, eff. 6-1-18.

DHS 38.04 Administering and evaluating a controlled substance abuse screening questionnaire to determine possible substance abuse. (1) WHO MUST COMPLETE A SCREENING QUESTIONNAIRE. At the time of application and at annual redetermination, an administering agency shall administer to any individual, as defined in s. DHS 38.02 (8), a controlled substance abuse screening questionnaire approved by the department, which may include questions related to controlled substance abuse as well as related criminal background. An administering agency shall determine whether answers to the controlled substance abuse-screening questionnaire indicate possible use of a controlled substance without a valid prescription by the individual.

(2) APPLICATION REQUIREMENTS. (a) An individual shall answer all questions on the screening questionnaire, sign and date the questionnaire, and submit the questionnaire to the administering agency.

(b) If answers to the questionnaire indicate the prescribed use of controlled substance by an individual, in addition to the requirements stated in par. (a), the individual shall provide a valid prescription to the administering agency.

(3) EFFECT OF FAILING TO COMPLETE SCREENING QUESTIONNAIRE. An individual who fails to comply with the application requirements stated in sub. (2) is not eligible to participate in the employment and training program, and the administering agency shall not refer the individual to participate in the program. An individual denied eligibility for participation in an employment and training program for failure to complete a screening questionnaire may complete a screening questionnaire at any time while FoodShare eligible.

(4) EFFECT OF SUCCESSFULLY PASSING THE SCREENING QUESTIONNAIRE. An individual whose answers to the screening questionnaire do not indicate possible substance abuse of a controlled substance has satisfied the requirements of this chapter and may participate in an employment and training program, subject to this chapter.

History: CR 17-005: cr. Register May 2018 No. 749, eff. 6-1-18 correction in (1), (3) under s. 35.17, Stats., Register May 2018 No. 749, eff. 6-1-18.

DHS 38.05 Requiring a test for the use of a controlled substance. (1) WHO MAY BE REQUIRED TO UNDERGO DRUG TESTING. An individual whose answers on the screening questionnaire indicate possible use of a controlled substance without a prescription order shall be required to undergo a test for the use of a controlled substance.

(2) NATURE OF TESTING REQUIRED. Testing shall consist of laboratory analysis of a specimen collected from an individual, by a qualified drug testing vendor or provider approved by the department, in a manner specified by the department that is consistent with guidelines from the U.S. department of health and human services. A qualified drug testing vendor shall analyze the specimen for the presence of controlled substances specified by the department.

(3) CONTRACT FOR TESTING SERVICES. Subject to the department's approval, the administering agency may contract with a qualified trauma-informed drug testing vendor to collect a specimen, carry out laboratory analysis of the specimen, store the specimen for confirmatory testing if required, complete confirmatory testing, provide review by a medical review officer, and document and report test results to the administering agency. The department may require the use of a specific testing service procured through state contracting if the department determines that volume discounts or other preferential pricing terms can be achieved through a statewide contract.

(4) REFUSAL TO SUBMIT TO A TEST. The following shall constitute a refusal to submit to a test by an individual:

(a) Failure or refusal to appear for a scheduled drug test without good cause.

(b) Failure or refusal to complete a form or release of information required for testing, including those required by the drug-testing vendor that permit the drug-testing vendor to report test results to the department or administering agency.

(c) Failure or refusal to provide a valid specimen for testing.

(d) Failure or refusal to provide verification of identity to the testing vendor.

(5) EFFECT OF REFUSAL TO SUBMIT TO A TEST. An individual who refuses to submit to a drug test, as provided in sub. (4), shall be ineligible to participate in the employment and training program until the individual agrees to be tested under sub. (2) for the use of a controlled substance, and test results have been reported. The administering agency may direct an individual who has refused to submit to a test and subsequently agrees to submit to a test to undergo drug testing on a random basis at any time within 10 business days after the individual agrees to submit to a test. The individual may not participate in an employment and training program until the individual undergoes a test for the use of a controlled substance and test results have been reported to the administering agency.

(6) REQUIREMENT FOR A CONFIRMATION TEST. If an individual tests positive for the use of a controlled substance, the drug testing vendor shall perform a confirmation test using the same specimen obtained for the initial positive drug test. All test results that are non-negative shall be interpreted by a drug testing vendor's medical review officer who shall be responsible for determining the presence of a controlled substance, as provided in sub. (2).

(7) ACCEPTING TEST RESULTS FROM ANOTHER PROGRAM. Results of a drug test performed by administering agency for the purpose of FoodShare eligibility or another state program, including a work experience program under ss. 49.162, 49.36, or 108.133, Stats., an income and maintenance program under s. 49.45 (23) (g), Stats., or a drug test carried out by the Wisconsin department of corrections, or other drug testing providers as approved by the department can be used by an administering agency to determine whether to refer an individual to treatment if the prior test results are provided directly to the administering agency, all the controlled substances required by the department to be tested under this chapter are included in the prior test results, and the test occurred within the previous 90 days.

(8) EFFECT OF A NEGATIVE TEST. An individual who undergoes a test for the use of a controlled substance under s. DHS 38.05 and tests negative for use of a controlled substance, or tests positive for use of a controlled substance but upon request provides to the administering agency a prescription for each controlled substance for which the individual tested positive, may participate in an employment and training program.

(9) EFFECT OF A POSITIVE TEST. An individual whose test results are positive for a controlled substance and who fails to provide a valid prescription for the controlled substance shall be required to participate in treatment under s. DHS 38.06.

(10) **EXCEPTION OF TESTING REQUIREMENTS.** Individuals may forego initial drug testing requirements under this chapter if they indicate in their drug screening questionnaire that they are ready to enter treatment.

History: CR 17-005: cr. Register May 2018 No. 749, eff. 6-1-18.

DHS 38.06 Requiring participation in treatment.

(1) **WHO MAY BE REQUIRED TO PARTICIPATE IN CONTROLLED SUBSTANCE ABUSE TREATMENT.** Every individual who undergoes a test under s. DHS 38.05 and tests positive for the use of a controlled substance without presenting a valid prescription, and as determined by the medical review officer for the drug testing vendor, shall be required to participate in trauma-informed controlled substance abuse treatment to remain eligible to participate in an employment and training program.

(2) **REFERRAL FOR TREATMENT.** The administering agency shall provide information to every individual required to participate in substance abuse treatment about treatment program providers and county-specific assessment and enrollment activities required for entry into treatment. The administering agency shall monitor the individual's progress in entering and completing treatment and the results of a random testing for the use of a controlled substance carried out during and at the conclusion of treatment.

(3) **SUBSTANCE ABUSE EVALUATION AND ASSESSMENT.** A treatment provider will conduct a trauma-informed substance abuse evaluation and assessment and take any of the following actions based on the evaluation and assessment:

(a) If a treatment provider determines an individual does not need substance abuse treatment, the provider shall notify the administering agency of its determination.

(b) If a treatment provider determines an individual is in need of substance abuse treatment, the provider shall refer the individual to an appropriate treatment program to begin treatment and shall notify the administering agency of the referral and the expected begin date and duration of treatment.

(c) If a treatment provider determines an individual is in need of treatment but is unable to refer the individual because there is a waiting list for enrollment in appropriate treatment programs, the provider shall notify the administering agency when the individual is expected to be enrolled.

(4) **ELIGIBILITY OF INDIVIDUAL TO PARTICIPATE IN AN EMPLOYMENT AND TRAINING PROGRAM WHEN TREATMENT IS NOT NEEDED OR THE INDIVIDUAL IS PLACED ON A WAITING LIST.** (a) An individual who has been determined by a treatment program after assessment not to need treatment will have satisfied the requirements of this chapter and may participate in an employment and training program.

(b) An individual who is on a waiting list for enrollment in an appropriate treatment program shall continue to take all necessary steps to continue seeking enrollment in an appropriate treatment program. The individual is eligible to participate in an employment and training program during the waiting list period, provided the individual is not eligible for immediate enrollment in another appropriate treatment program.

(5) **SATISFYING THE REQUIREMENT TO PARTICIPATE IN TREATMENT THROUGH PARTICIPATION IN ANOTHER PROGRAM.** An administering agency shall accept current participation in any treatment program to satisfy the requirements of this section. The individual participating in another program shall execute a release of information to allow the administering agency to obtain verification of successful participation in that treatment program.

(6) **REFUSAL TO PARTICIPATE IN TREATMENT.** An individual refuses to participate in treatment if he or she does any of the following:

(a) Fails or refuses to complete a form or releases required for treatment program administration, including those required by the

treatment provider in order to share information with the administering agency about the individual's participation in treatment.

(b) Fails or refuses to participate in a controlled substance test required by the treatment provider or the administering agency during the course of required treatment, including random controlled substance testing directed by the treatment provider or administering agency.

(c) Fails or refuses to meet attendance or participation requirements established by the treatment provider.

(d) Fails or refuses to complete a substance abuse assessment.

(7) **EFFECT OF REFUSAL TO PARTICIPATE IN TREATMENT.** Refusal to participate in a substance abuse treatment program will lead to ineligibility to participate in the employment and training program; however, an individual subject to this section may reapply for enrollment at any time if the individual agrees to participate in treatment and remains eligible for FoodShare benefits.

(8) **COMPLETION OF REQUIRED TREATMENT.** Individuals subject to this section will be considered to be successfully completing treatment if all components of the treatment program identified under the evaluation assessment as described in s. DHS 38.06 (3) are met.

(9) **PARTICIPATION IN EMPLOYMENT AND TRAINING PROGRAM WORK REQUIREMENTS WHILE IN TREATMENT.** An individual who is participating in an employment and training program shall be exempt from compliance with the work requirements under s. 49.79 (9), Stats., while participating in treatment.

History: CR 17-005: cr. Register May 2018 No. 749, eff. 6-1-18.

DHS 38.07 Effect of completing, voluntarily withdrawing, or being terminated from an employment and training program. An individual who completes or voluntarily withdraws from an employment and training program is no longer subject to s. 49.79 (9) (d), Stats., or this chapter. An individual who is terminated from a program for reasons unrelated to substance abuse screening, testing, and treatment is no longer subject to s. 49.79 (9) (d), Stats., or this chapter. An individual who is no longer subject to the requirements of s. 49.79 (10) (a) is not subject to s. 49.79 (9) (d), Stats., or this chapter.

History: CR 17-005: cr. Register May 2018 No. 749, eff. 6-1-18.

DHS 38.08 Confidentiality of records. Completed screening questionnaires, prescriptions, testing results, and treatment records relating to this chapter shall not be disclosed unless for purposes connected with the administration of an employment and training program, unless disclosure is otherwise authorized by law or by written consent from the individual who is the subject of the record. The department may establish administrative, physical, and technical safeguard procedures administering agencies may be required to follow to assure compliance with state and federal laws relating to public assistance program records, drug testing and treatment records, and medical records.

History: CR 17-005: cr. Register May 2018 No. 749, eff. 6-1-18.

DHS 38.09 Appeals. An adverse decision under this chapter may be appealed following the procedure under 7 CFR 273.15 and s. HA 3.03.

History: CR 17-005: cr. Register May 2018 No. 749, eff. 6-1-18.

DHS 38.10 Payment of costs related to screening, testing and treatment. (1) The department shall pay for all costs related to screening individuals for controlled substance abuse, including the costs of producing, administering, and reviewing screening questionnaires.

(2) The department shall pay for all costs related to testing individuals for controlled substance abuse, including any costs related to contracting with qualified drug testing vendors under s. DHS 38.05 (3).

DHS 38.10

WISCONSIN ADMINISTRATIVE CODE

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(3) The department shall fund treatment costs not otherwise covered by Medicaid or other private insurance at rates no higher than Medicaid rates.

History: CR 17-005: cr. Register May 2018 No. 749, eff. 6-1-18.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6039? Dep
TJD:... Gmn

In: 11/23

Today
ASAP

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

SA
Xref
Pwf

Gen.

- 1 **AN ACT ...; relating to:** incorporating in statutes the rule regarding drug testing
- 2 for participants in the FoodShare employment and training program.

Analysis by the Legislative Reference Bureau

This bill incorporates the provisions of chapter DHS 38 of the Wisconsin Administrative Code into the statutes. 2015 Wisconsin Act 55, the biennial budget act for the 2015-16 legislative session, required the Department of Health Services to promulgate rules to develop and implement a screening, testing, and treatment policy and then to screen and test for illegal use of a controlled substance and treat for substance abuse able-bodied adults who seek to participate in the FoodShare program's employment and training program known as FSET. DHS promulgated chapter DHS 38, Wisconsin Administrative Code, regarding substance abuse screening, testing, and treatment for certain department employment and training programs. The bill incorporates the specifications and requirements of that DHS rule into the statutes. In summary, the provisions of the rule and the bill require an agency that is administering FSET to require able-bodied adults who are subject to a work requirement to participate in FoodShare and who seek to participate in FSET to fulfill that work requirement to undergo screening for use of a controlled substance without a prescription, testing for use of a controlled substance in certain circumstances, and treatment, if applicable, for use of the controlled substance in order to be eligible to participate in FSET.

Wis. Am.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 SECTION 1. 49.79 (9) (d) 1. of the statutes is repealed.

2 SECTION 2. 49.79 (9) (d) 2. of the statutes is renumbered 49.79 (9) (d) and
3 amended to read:

4 × 49.79 (9) (d) Subject to the promulgation of rules under subd. 1. s. 49.791, the
5 department shall screen and, if indicated, test and treat participants in an
6 employment and training program under this subsection who are able-bodied adults
7 for illegal use of a controlled substance without a valid prescription for the controlled
8 substance. Eligibility for an able-bodied adult to participate in an employment and

9 training program under this subsection is subject to s. 49.791.

History: 2001 a. 16 ss. 1656sy to 1656tjk, 1656tjm to 1656tp, 1656tr, 1656ts to 1656tx, 1838sb to 1838td.; Stats 2001 s. 49.79; 2003 a. 33; 2005 a. 25; 2005 a. 443 s. 265; 2007 a. 20 ss. 1397, 1399 to 1407, 1662 to 1669; 2011 a. 32; 2013 a. 20, 168; 2015 a. 55; 2017 a. 59, 263, 264, 266, 269; s. 35.17 correction in (9) (a) 2.

10 SECTION 3. 49.791 of the statutes is created to read:

11 **49.791 Substance abuse screening, testing, and treatment for**
12 **employment and training programs. (1) DEFINITIONS.** In this section:

13 (a) "Able-bodied adult" has the meaning given in s. 49.79 (1) (am).

14 (b) "Administering agency" means an administrative agency within the
15 executive branch under ch. 15 or an entity that contracts with the state such as a
16 single county consortia under s. 49.78 (1r), a multicounty consortia under s. 49.78 (1)
17 (br), or a tribal governing body under s. 49.78 (1) (cr).

18 (c) "Confirmation test" means an analytical procedure used to quantify a
19 specific controlled substance or its metabolite in a specimen through a test that is
20 different in scientific principle from that if the initial test procedure and capable of
21 providing the requisite specificity, sensitivity, and quantitative accuracy to
22 positively confirm use of a controlled substance.

23 (d) "Controlled substance" has the meaning given in s. 49.79 (1) (b).

1 (e) "Employment and training program" means the food stamp program
2 employment and training program under s. 49.79 (9).

3 (f) "Food stamp program" has the meaning given in s. 49.79 (1) (c).

4 (g) "Medical review officer" means a licensed medical provider who is employed
5 by or providing services under a contract to a qualified drug testing vendor, has
6 knowledge of substance abuse disorders and laboratory testing procedures, has the
7 necessary training and experience to interpret and evaluate an individual's positive
8 test result in relation to the individual's medical history and valid prescriptions.

9 (h) "Metabolite" means a chemical present in the body when a controlled
10 substance is being broken down through natural metabolic processes that can be
11 detected or measured as a positive indicator that a controlled substance associated
12 with the metabolite has been used.

13 (i) "Prescription" means a current order for a controlled substance that
14 indicates the specific regimen and duration of the order and that is transmitted
15 electronically or in writing by an individual authorized in this state to order the
16 controlled substance.

17 (j) "Qualified drug testing vendor" means a laboratory certified by the federal
18 centers for medical and medicaid services under the federal Clinical Laboratory
19 Improvement Amendments of 1988 to collect a specimen, carry out laboratory
20 analysis of the specimen, store the specimen for a confirmation test if required,
21 complete a confirmation test, and provide review by a medical review officer.

22 (k) "Screening" means completing a questionnaire specified by the department
23 regarding an individual's current and prior use of any controlled substance.

24 (L) "Specimen" means tissue, fluid, or any other product of the human body
25 required to be submitted by an individual for testing under this section.

1 (m) "Trauma-informed" means operating under the understanding of the
2 science of adverse childhood experiences, toxic stress, trauma, and resilience,
3 incorporating that understanding into organizational culture, policies, programs,
4 and practices, and adhering to trauma-informed principles such as safety,
5 trustworthiness and transparency, peer support, collaboration and mutuality,
6 empowerment, and cultural, historical, and gender issue recognition.

7 (n) "Treatment" means any service that is conducted under clinical supervision
8 to assist an individual through the process of recovery from controlled substance
9 abuse, including screening, application of approved placement criteria, intake,
10 orientation, assessment, individualized treatment planning, intervention,
11 individual or group and family counseling, referral, discharge planning, after care
12 or continuing care, record keeping, consultation with other professionals regarding
13 treatment services, recovery and case management, crisis intervention, education,
14 employment, and problem resolution in life skills functioning.

15 (o) "Treatment program" means a program certified by the department to
16 provide treatment for controlled substance abuse as a medically managed inpatient
17 service, a medically monitored treatment service, a day treatment service, an
18 outpatient treatment service, a transitional residential treatment service, or a
19 narcotic treatment service for opiate addiction or, as approved by the department,
20 psychosocial rehabilitation services.

21 (p) "Treatment provider" means a provider of treatment services for controlled
22 substance abuse certified by the department, a provider certified under s. 440.88, or
23 a licensed professional who meets criteria established by the department of safety
24 and professional services.

1 (2) NOTICE OF REQUIREMENT. An administering agency shall provide
2 information in a format approved by the department ^{to} in any individual who expresses
3 interest in or is referred to participate in an employment and training program to
4 explain the requirement for participants in certain employment and training
5 programs to undergo screening, testing, and treatment for abuse of controlled
6 substances.

7 (3) ADMINISTERING AND EVALUATING A CONTROLLED SUBSTANCE ABUSE SCREENING
8 QUESTIONNAIRE. (a) At the time of application and at annual redetermination for
9 eligibility in the food stamp program, an administering agency shall administer to
10 any able-bodied adult who is subject to the work requirement under s. 49.79¹(10) (a)
11 and intends on meeting the work requirement through participation in the
12 employment and training program a controlled substance abuse screening
13 questionnaire approved by the department, which may include questions related to
14 controlled substance abuse-related criminal background and controlled substance
15 abuse. The administering agency shall determine whether answers to the controlled
16 substance abuse screening questionnaire indicate possible use of a controlled
17 substance without a valid prescription by the able-bodied adult.

18 (b) 1. An able-bodied adult who is administered a controlled substance abuse
19 screening questionnaire under par. (a) shall answer all questions on the screening
20 questionnaire, sign and date the questionnaire, and submit the questionnaire to the
21 administering agency.

22 2. If the able-bodied adult indicates on the screening questionnaire submitted
23 under subd. 1. ^{the} prescribed use of a controlled substance, the able-bodied adult shall
24 provide evidence of the valid prescription to the administering agency.

1 (c) An able-bodied adult who is administered a controlled substance abuse
2 screening questionnaire under par. (a) and who fails to comply with the requirements
3 under par. (b) is not eligible to participate in the employment and training program,
4 and the administering agency may not refer the individual to participate in the
5 employment and training program. An able-bodied adult who is denied eligibility
6 for participation in the employment and training program for failure to complete the
7 requirements under par. (b) may complete the requirements under par. (b) at any
8 time while eligible for the food stamp program.

9 (d) An able-bodied adult who completes a controlled substance abuse screening
10 questionnaire under this subsection and whose answers to the screening
11 questionnaire do not indicate possible abuse of a controlled substance has satisfied
12 the requirements of this section and may participate in an employment and training
13 program subject to this section.

14 (4) TESTING FOR USE OF A CONTROLLED SUBSTANCE REQUIRED. (a) *Individuals*
15 *required to undergo testing; exception.* 1. Except as provided in subd. 2., an
16 administering agency shall require an able-bodied adult whose answers on the
17 controlled substance abuse screening questionnaire submitted under sub. (3)
18 indicate possible use of a controlled substance ~~abuse~~ without a prescription to
19 undergo a test for the use of a controlled substance.

20 2. An administering agency may not require an able-bodied adult whose
21 answers on the controlled substance abuse screening questionnaire submitted under
22 sub. (3) indicate possible use of a controlled substance and ^{who} also indicates readiness
23 to enter treatment for controlled substance abuse to undergo a test for the use of a
24 controlled substance.

1 (b) *Nature of testing required.* A test for use of a controlled substance under
2 this subsection consists of laboratory analysis of a specimen collected from an
3 able-bodied adult described in par. (a) in a manner specified by the department that
4 is consistent with guidelines from the federal department of health and human
5 services by a qualified drug testing vendor or a provider approved by the department.
6 The qualified drug testing vendor or other provider shall analyze the specimen for
7 the presence of controlled substances specified by the department.

8 (c) *Contracts for testing services.* 1. The administering agency, subject to the
9 department's approval, may contract with a trauma-informed qualified drug testing
10 vendor to collect a specimen, carry out laboratory analysis of the specimen, store the
11 specimen for confirmatory testing if required, complete confirmatory testing, provide
12 review by a medical review officer, and document and report test results to the
13 administering agency.

14 2. The department may require administering agencies to use a specific drug
15 testing service procured through state contracting if the department determines that
16 volume discounts or other preferential pricing terms may be achieved through a
17 statewide contract.

18 (d) *Effects of result to submit to drug test.* 1. An able-bodied adult who is
19 required to undergo a test for the use of a controlled substance under par. (a) but who
20 refuses to submit to a drug test by doing any of the following is ineligible to
21 participate in the employment and training program until the individual agrees to
22 be tested for use of a controlled substance and test results have been reported:

23 a. Failing or refusing to appear for a scheduled drug test without good cause.

24 b. Failing or refusing to complete a form or release of information required for
25 testing, including any form or release required by the qualified drug testing vendor

1 to permit the vendor to report test results to the administering agency or
2 department.

3 c. Failing or refusing to provide a valid specimen for testing.

4 d. Failing or refusing to provide verification of identity to the testing vendor.

5 2. The administering agency may direct an able-bodied adult who initially
6 refused to submit to a drug test under subd. 1. and subsequently agrees to submit
7 to a test to under drug testing on a random basis at any time within 10 business days
8 after the able-bodied adult agrees to submit to a test.

9 (e) *Confirmation test required.* If an able-bodied adult tests positive for the use
10 of a controlled substance, the qualified drug testing vendor shall perform a
11 confirmation test using the same specimen obtained for the initial drug test. The
12 vendor's medical review officer who is responsible for determining the presence of a
13 controlled substance under par. (b) shall interpret all drug test results that are not
14 negative.

15 (f) *Accepting test results from other programs.* For purposes of this section, an
16 administering agency may use results of a drug test performed by the administering
17 agency for the purpose of eligibility for another state program, including a work
18 experience program under s. 49.162, 49.36, or 108.133, performed at the request of
19 the department of corrections, or performed by other drug testing providers as
20 approved by the department to determine whether to refer an able-bodied adult to
21 treatment if all of the following apply:

22 1. The test results are provided directly to the administering agency.

23 2. The test results include tests for all controlled substances required by the
24 department to be tested under this section.

1 3. The test occurred within 90 days before the results are provided to the
2 administering agency.

3 (g) *Effect of a negative test.* An able-bodied adult who undergoes a test for use
4 of a controlled substance under this subsection and tests negative for use of a
5 controlled substance or who tests positive for use of a controlled substance but
6 provides to the administering agency a prescription for each controlled substance for
7 which the adult tests positive is not prohibited from participating in an employment
8 and training program.

9 (h) *Effect of a positive test.* An able-bodied adult who undergoes a test for use
10 of a controlled substance under this subsection, whose test results are positive, and
11 who does not provide evidence of a prescription for the controlled substance, as
12 determined by the ^{qualified} drug testing vendor's medical review officer, is required to
13 participate in treatment under sub. (5) to participate in an employment and training
14 program.

15 (5) PARTICIPATION IN TREATMENT REQUIRED. (a) *Individuals required to*
16 *participate in treatment.* An able-bodied adult who is described under sub. (4) (a)
17 or (h) is required to participate in trauma-informed treatment to be eligible to
18 participate in an employment and training program.

19 (b) *Referral for treatment; monitoring.* The applicable administering agency
20 shall provide to every able-bodied adult who is required to participate in treatment
21 under par. (a) information about treatment programs and county-specific
22 assessment and enrollment activities required for entry into treatment. The
23 applicable administering agency shall monitor the able-bodied adult's progress in
24 entering and completing treatment and the results of random testing for the use of
25 a controlled substance carried out during and at the conclusion of treatment.

1 (c) *Evaluation and assessment.* A treatment provider shall conduct a
2 trauma-informed substance abuse evaluation and assessment of each able-bodied
3 adult and take any of the following actions, as appropriate, based on the evaluation
4 and assessment:

5 1. If the treatment provider determines the able-bodied adult does not need
6 treatment, notify the administering agency that the able-bodied adult does not need
7 treatment.

8 2. If the treatment provider determines the able-bodied adult is in need of
9 treatment, refer the individual to an appropriate treatment program to begin
10 treatment and notify the administering agency of the referral and the expected start
11 date and duration of treatment.

12 3. If a treatment provider determines the able-bodied adult is in need of
13 treatment but is unable to refer the adult because there is a waiting list for
14 enrollment, enter the able-bodied adult on the waiting list and notify the
15 administering agency of the date the adult is expected to be enrolled.

16 (d) *Eligibility when treatment not needed or on waiting list.* 1. An able-bodied
17 adult described in par. (c) 1. is determined to have satisfied the requirements of this
18 section and is eligible under this section to participate in an employment and
19 training program.

20 2. An able-bodied adult who is on a waiting list for enrollment in an
21 appropriate treatment program under par. (c) 3. shall continue to take all necessary
22 steps to continue seeking enrollment in the appropriate treatment program. The
23 able-bodied adult is eligible under this section to participate in an employment and
24 training program while on the waiting list if the adult is not eligible for immediate
25 enrollment in another appropriate treatment program.

1 (e) *Satisfying treatment requirement through another program.* An
2 administering agency shall accept as satisfying the requirements of this subsection
3 participation in any treatment program. The able-bodied adult satisfying the
4 requirements of this subsection by participating in another treatment program shall
5 execute a release of information to allow the administering agency to obtain
6 verification of successful participation in that treatment program.

7 (d) *Effects of ^{refusal} result to submit to ^{treatment} drug test.* 1. An able-bodied adult who is
8 required to participate in treatment under par. (a) but who refuses to participate in
9 treatment by doing any of the following is ineligible to participate in the employment
10 and training program until the individual agrees to participate in treatment while
11 still eligible for the food stamp program:

12 a. Failing or refusing to complete a form or release required for treatment
13 program administration, including a form or release required by the treatment
14 provider in order to share information with the administering agency about the
15 able-bodied adult's participation in treatment.

16 b. Failing or refusing to participate in a controlled substance test required by
17 the treatment provider or the administering agency during the course of required
18 treatment, including any random controlled substance testing directed by the
19 treatment provider or administering agency.

20 c. Failing or refusing to meet attendance or participation requirements
21 established by the treatment provider.

22 d. Failing or refusing to complete a substance abuse assessment.

23 (e) *Completion of required treatment.* An able-bodied adult required under par.

24 (a) to participate in treatment is considered to have successfully completed
25 treatment if all applicable components identified under par. (c) are satisfied.

1 (f) *Work requirements while in treatment.* An able-bodied adult who is
2 participating in an employment and training program is exempt from complying
3 with requirements to work a specified number of hours under s. 49.79 (9) or (10).

4 (6) EFFECT OF COMPLETION, WITHDRAWAL, OR TERMINATION FROM EMPLOYMENT AND
5 TRAINING PROGRAM. An able-bodied adult who satisfies any of the following is no
6 longer subject to s. 49.79 (9) (d) or this section:

7 (a) The able-bodied adult has completed or voluntarily withdrawn from
8 participation in an employment and training program.

9 (b) The able-bodied adult is terminated from an employment and training
10 program ^{for} ~~from~~ reasons unrelated to this section.

11 (c) The able-bodied adult is no longer subject to the requirements of s. 49.79
12 (10).

13 (7) CONFIDENTIALITY OF RECORDS. Completed screening questionnaires,
14 prescriptions, testing results, and treatment records relating to this section may not
15 be disclosed except for purposes connected with the administration of an
16 employment and training program or except when disclosure is otherwise authorized
17 by law or by written consent from the individual who is the subject of the record. The
18 department may establish administrative, physical, and technical safeguard
19 procedures administering agencies must follow to assure compliance with state and
20 federal laws related to public assistance program records, drug testing and
21 treatment records, and medical records.

22 (8) APPEALS. An adverse decision under this section may be appealed under 7
23 CFR 273.15 and procedures established in rules promulgated by the division of
24 hearings and appeals.

1

(9) PAYMENT OF COSTS FOR SCREENING, TESTING AND TREATMENT. (a) The

2

department shall pay for all costs related to screening able-bodied adults under sub.

3

(3), including the costs of producing, administering, and reviewing screening

4

questionnaires.

5

(b) The department shall pay for all costs related to testing able-bodied adults

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under sub. (4), including any costs related to contracting with qualified drug testing

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vendors under sub. (4)(c).

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(c) The department shall pay costs for treatment under sub. (5) that are not

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covered by the Medical Assistance program under subch. IV of ch. 49 or other private

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insurance. Payments by the department under this paragraph shall be at rates no

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higher than the rates paid for comparable services under the Medical Assistance

12

program.

13

(END)



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6039/P1
TJD:amn

ep2

In: 11/28

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

- 1 **AN ACT** *to repeal* 49.79 (9) (d) 1.; *to renumber and amend* 49.79 (9) (d) 2.; and
2 *to create* 49.791 of the statutes; **relating to:** incorporating in statutes the rule
3 regarding drug testing for participants in the FoodShare employment and
4 training program.

Analysis by the Legislative Reference Bureau

This bill incorporates the provisions of chapter DHS 38 of the Wisconsin Administrative Code into the statutes. 2015 Wisconsin Act 55, the biennial budget act for the 2015-16 legislative session, required the Department of Health Services to promulgate rules to develop and implement a screening, testing, and treatment policy and then to screen and test for illegal use of a controlled substance and treat for substance abuse able-bodied adults who seek to participate in the FoodShare program's employment and training program known as FSET. DHS promulgated chapter DHS 38, Wis. Adm. Code, regarding substance abuse screening, testing, and treatment for certain department employment and training programs. The bill incorporates the specifications and requirements of that DHS rule into the statutes. In summary, the provisions of the rule and the bill require an agency that is administering FSET to require able-bodied adults who are subject to a work requirement to participate in FoodShare and who seek to participate in FSET to fulfill that work requirement to undergo screening for use of a controlled substance without a prescription, testing for use of a controlled substance in certain

and requires implementation of the screening, testing, and treatment by October 1, 2019

circumstances, and treatment, if applicable, for use of the controlled substance in order to be eligible to participate in FSET.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.79 (9) (d) 1. of the statutes is repealed.

2 **SECTION 2.** 49.79 (9) (d) 2. of the statutes is renumbered 49.79 (9) (d) and
3 amended to read:

4 49.79 (9) (d) Subject to the promulgation of rules under subd. 1. s. 49.791, the
5 department shall screen and, if indicated, test and treat participants in an
6 employment and training program under this subsection who are able-bodied adults
7 for illegal use of a controlled substance without a valid prescription for the controlled
8 substance. Eligibility for an able-bodied adult to participate in an employment and
9 training program under this subsection is subject to s. 49.791.

10 **SECTION 3.** 49.791 of the statutes is created to read:

11 **49.791 Substance abuse screening, testing, and treatment for**
12 **employment and training programs. (1) DEFINITIONS.** In this section:

13 (a) "Able-bodied adult" has the meaning given in s. 49.79 (1) (am).

14 (b) "Administering agency" means an administrative agency within the
15 executive branch under ch. 15 or an entity that contracts with the state such as a
16 single county consortia under s. 49.78 (1r), a multicounty consortia under s. 49.78 (1)
17 (br), or a tribal governing body under s. 49.78 (1) (cr).

18 (c) "Confirmation test" means an analytical procedure used to quantify a
19 specific controlled substance or its metabolite in a specimen through a test that is
20 different in scientific principle from that of the initial test procedure and capable of

1 providing the requisite specificity, sensitivity, and quantitative accuracy to
2 positively confirm use of a controlled substance.

3 (d) "Controlled substance" has the meaning given in s. 49.79 (1) (b).

4 (e) "Employment and training program" means the food stamp employment
5 and training program under s. 49.79 (9).

6 (f) "Food stamp program" has the meaning given in s. 49.79 (1) (c).

7 (g) "Medical review officer" means a licensed medical provider who is employed
8 by or providing services under a contract to a qualified drug testing vendor, has
9 knowledge of substance abuse disorders and laboratory testing procedures, ^{and} has the
10 necessary training and experience to interpret and evaluate an individual's positive
11 test result in relation to the individual's medical history and valid prescriptions.

12 (h) "Metabolite" means a chemical present in the body when a controlled
13 substance is being broken down through natural metabolic processes that can be
14 detected or measured as a positive indicator that a controlled substance associated
15 with the metabolite has been used.

16 (i) "Prescription" means a current order for a controlled substance that
17 indicates the specific regimen and duration of the order and that is transmitted
18 electronically or in writing by an individual authorized in this state to order the
19 controlled substance.

20 (j) "Qualified drug testing vendor" means a laboratory certified by the federal
21 centers for medical and medicaid services under the federal Clinical Laboratory
22 Improvement Amendments of 1988 to collect a specimen, carry out laboratory
23 analysis of the specimen, store the specimen for a confirmation test if required,
24 complete a confirmation test, and provide review by a medical review officer.

1 (k) "Screening" means completing a questionnaire specified by the department
2 regarding an individual's current and prior use of any controlled substance.

3 (L) "Specimen" means tissue, fluid, or any other product of the human body
4 required to be submitted by an individual for testing under this section.

5 (m) "Trauma-informed" means operating under the understanding of the
6 science of adverse childhood experiences, toxic stress, trauma, and resilience,
7 incorporating that understanding into organizational culture, policies, programs,
8 and practices, and adhering to trauma-informed principles such as safety,
9 trustworthiness and transparency, peer support, collaboration and mutuality,
10 empowerment, and cultural, historical, and gender issue recognition.

11 (n) "Treatment" means any service that is conducted under clinical supervision
12 to assist an individual through the process of recovery from controlled substance
13 abuse, including screening, application of approved placement criteria, intake,
14 orientation, assessment, individualized treatment planning, intervention,
15 individual or group and family counseling, referral, discharge planning, after care
16 or continuing care, record keeping, consultation with other professionals regarding
17 treatment services, recovery and case management, crisis intervention, education,
18 employment, and problem resolution in life skills functioning.

19 (o) "Treatment program" means a program certified by the department to
20 provide treatment for controlled substance abuse as a medically managed inpatient
21 service, a medically monitored treatment service, a day treatment service, an
22 outpatient treatment service, a transitional residential treatment service, or a
23 narcotic treatment service for opiate addiction or, as approved by the department,
24 psychosocial rehabilitation services.

1 (p) "Treatment provider" means a provider of treatment for controlled
2 substance abuse certified by the department, a provider certified under s. 440.88, or
3 a licensed professional who meets criteria established by the department of safety
4 and professional services.

5 (2) NOTICE OF REQUIREMENT. An administering agency shall provide
6 information in a format approved by the department to any individual who expresses
7 interest in or is referred to participate in an employment and training program to
8 explain the requirement for participants in certain employment and training
9 programs to undergo screening, testing, and treatment for abuse of controlled
10 substances.

11 (3) ADMINISTERING AND EVALUATING A CONTROLLED SUBSTANCE ABUSE SCREENING
12 QUESTIONNAIRE. (a) At the time of application and at annual redetermination for
13 eligibility in the food stamp program, an administering agency shall administer to
14 any able-bodied adult who is subject to the work requirement under s. 49.79 (10) (a)
15 and intends on meeting the work requirement through participation in the
16 employment and training program a controlled substance abuse screening
17 questionnaire approved by the department, which may include questions related to
18 controlled substance abuse-related criminal background and controlled substance
19 abuse. The administering agency shall determine whether answers to the controlled
20 substance abuse screening questionnaire indicate possible use of a controlled
21 substance without a valid prescription by the able-bodied adult.

22 (b) 1. An able-bodied adult who is administered a controlled substance abuse
23 screening questionnaire under par. (a) shall answer all questions on the screening
24 questionnaire, sign and date the questionnaire, and submit the questionnaire to the
25 administering agency.

1 2. If the able-bodied adult indicates on the screening questionnaire submitted
2 under subd. 1. the prescribed use of a controlled substance, the able-bodied adult
3 shall provide evidence of the valid prescription to the administering agency.

4 (c) An able-bodied adult who is administered a controlled substance abuse
5 screening questionnaire under par. (a) and who fails to comply with the requirements
6 under par. (b) is not eligible to participate in the employment and training program,
7 and the administering agency may not refer the individual to participate in the
8 employment and training program. An able-bodied adult who is denied eligibility
9 for participation in the employment and training program for failure to complete the
10 requirements under par. (b) may complete the requirements under par. (b) at any
11 time while eligible for the food stamp program.

12 (d) An able-bodied adult who completes a controlled substance abuse screening
13 questionnaire under this subsection and whose answers to the screening
14 questionnaire do not indicate possible abuse of a controlled substance has satisfied
15 the requirements of this section and may participate in an employment and training
16 program subject to this section.

17 (4) TESTING FOR USE OF A CONTROLLED SUBSTANCE REQUIRED. (a) *Individuals*
18 *required to undergo testing; exception.* 1. Except as provided in subd. 2., an
19 administering agency shall require an able-bodied adult whose answers on the
20 controlled substance abuse screening questionnaire submitted under sub. (3)
21 indicate possible use of a controlled substance without a prescription to undergo a
22 test for the use of a controlled substance.

23 2. An administering agency may not require an able-bodied adult whose
24 answers on the controlled substance abuse screening questionnaire submitted under
25 sub. (3) indicate possible use of a controlled substance and who also indicates

1 readiness to enter treatment for controlled substance abuse to undergo a test for the
2 use of a controlled substance.

3 (b) *Nature of testing required.* A test for use of a controlled substance under
4 this subsection consists of laboratory analysis of a specimen collected from an
5 able-bodied adult described in par. (a) in a manner specified by the department that
6 is consistent with guidelines from the federal department of health and human
7 services by a qualified drug testing vendor or a provider approved by the department.
8 The qualified drug testing vendor or other provider shall analyze the specimen for
9 the presence of controlled substances specified by the department.

10 (c) *Contracts for testing services.* 1. The administering agency, subject to the
11 department's approval, may contract with a trauma-informed qualified drug testing
12 vendor to collect a specimen, carry out laboratory analysis of the specimen, store the
13 specimen for confirmatory testing if required, complete confirmatory testing, provide
14 review by a medical review officer, and document and report test results to the
15 administering agency.

16 2. The department may require administering agencies to use a specific drug
17 testing service procured through state contracting if the department determines that
18 volume discounts or other preferential pricing terms may be achieved through a
19 statewide contract.

20 (d) *Effects of refusal to submit to drug test.* 1. An able-bodied adult who is
21 required to undergo a test for the use of a controlled substance under par. (a) but who
22 refuses to submit to a drug test by doing any of the following is ineligible to
23 participate in the employment and training program until the individual agrees to
24 be tested for use of a controlled substance and test results have been reported:

25 a. Failing or refusing to appear for a scheduled drug test without good cause.

1 b. Failing or refusing to complete a form or release of information required for
2 testing, including any form or release required by the qualified drug testing vendor
3 to permit the vendor to report test results to the administering agency or
4 department.

5 c. Failing or refusing to provide a valid specimen for testing.

6 d. Failing or refusing to provide verification of identity to the testing vendor.

7 2. The administering agency may direct an able-bodied adult who initially
8 refused to submit to a drug test under subd. 1. and subsequently agrees to submit
9 to a test to undergo drug testing on a random basis at any time within 10 business
10 days after the able-bodied adult agrees to submit to a test.

11 (e) *Confirmation test required.* If an able-bodied adult tests positive for the use
12 of a controlled substance, the qualified drug testing vendor shall perform a
13 confirmation test using the same specimen obtained for the initial drug test. The
14 vendor's medical review officer who is responsible for determining the presence of a
15 controlled substance under par. (b) shall interpret all drug test results that are not
16 negative.

17 (f) *Accepting test results from other programs.* For purposes of this section, an
18 administering agency may use results of a drug test performed by the administering
19 agency for the purpose of eligibility for another state program, including a work
20 experience program under s. 49.162, 49.36, or 108.133, performed at the request of
21 the department of corrections, or performed by other drug testing providers as
22 approved by the department to determine whether to refer an able-bodied adult to
23 treatment if all of the following apply:

24 1. The test results are provided directly to the administering agency.

1 2. The test results include tests for all controlled substances required by the
2 department to be tested under this section.

3 3. The test occurred within 90 days before the results are provided to the
4 administering agency.

5 (g) *Effect of a negative test.* An able-bodied adult who undergoes a test for use
6 of a controlled substance under this subsection and tests negative for use of a
7 controlled substance or who tests positive for use of a controlled substance but
8 provides to the administering agency a prescription for each controlled substance for
9 which the adult tests positive is not prohibited from participating in an employment
10 and training program.

11 (h) *Effect of a positive test.* An able-bodied adult who undergoes a test for use
12 of a controlled substance under this subsection, whose test results are positive, and
13 who does not provide evidence of a prescription for the controlled substance, as
14 determined by the qualified drug testing vendor's medical review officer, is required
15 to participate in treatment under sub. (5) to participate in an employment and
16 training program.

17 (5) PARTICIPATION IN TREATMENT REQUIRED. (a) *Individuals required to*
18 *participate in treatment.* An able-bodied adult who is described under sub. (4) (a)
19 or (h) is required to participate in trauma-informed treatment to be eligible to
20 participate in an employment and training program.

21 (b) *Referral for treatment; monitoring.* The applicable administering agency
22 shall provide to every able-bodied adult who is required to participate in treatment
23 under par. (a) information about treatment programs and county-specific
24 assessment and enrollment activities required for entry into treatment. The
25 applicable administering agency shall monitor the able-bodied adult's progress in

1 entering and completing treatment and the results of random testing for the use of
2 a controlled substance carried out during and at the conclusion of treatment.

3 (c) *Evaluation and assessment.* A treatment provider shall conduct a
4 trauma-informed substance abuse evaluation and assessment of each able-bodied
5 adult and take any of the following actions, as appropriate, based on the evaluation
6 and assessment:

7 1. If the treatment provider determines the able-bodied adult does not need
8 treatment, notify the administering agency that the able-bodied adult does not need
9 treatment.

10 2. If the treatment provider determines the able-bodied adult is in need of
11 treatment, refer the individual to an appropriate treatment program to begin
12 treatment and notify the administering agency of the referral and the expected start
13 date and duration of treatment.

14 3. If a treatment provider determines the able-bodied adult is in need of
15 treatment but is unable to refer the adult because there is a waiting list for
16 enrollment, enter the able-bodied adult on the waiting list and notify the
17 administering agency of the date the adult is expected to be enrolled.

18 (d) *Eligibility when treatment not needed or on waiting list.* 1. An able-bodied
19 adult described in par. (c) 1. is determined to have satisfied the requirements of this
20 section and is eligible under this section to participate in an employment and
21 training program.

22 2. An able-bodied adult who is on a waiting list for enrollment in an
23 appropriate treatment program under par. (c) 3. shall continue to take all necessary
24 steps to continue seeking enrollment in the appropriate treatment program. The
25 able-bodied adult is eligible under this section to participate in an employment and

1 training program while on the waiting list if the adult is not eligible for immediate
2 enrollment in another appropriate treatment program.

3 (e) *Satisfying treatment requirement through another program.* An
4 administering agency shall accept as satisfying the requirements of this subsection
5 participation in any treatment program. The able-bodied adult satisfying the
6 requirements of this subsection by participating in another treatment program shall
7 execute a release of information to allow the administering agency to obtain
8 verification of successful participation in that treatment program.

9 *(f) Effects of refusal to submit to treatment.* 1. An able-bodied adult who is
10 required to participate in treatment under par. (a) but who refuses to participate in
11 treatment by doing any of the following is ineligible to participate in the employment
12 and training program until the individual agrees to participate in treatment while
13 still eligible for the food stamp program:

14 a. Failing or refusing to complete a form or release required for treatment
15 program administration, including a form or release required by the treatment
16 provider in order to share information with the administering agency about the
17 able-bodied adult's participation in treatment.

18 b. Failing or refusing to participate in a controlled substance test required by
19 the treatment provider or the administering agency during the course of required
20 treatment, including any random controlled substance testing directed by the
21 treatment provider or administering agency.

22 c. Failing or refusing to meet attendance or participation requirements
23 established by the treatment provider.

24 d. Failing or refusing to complete a substance abuse assessment.

while participating
in treatment under
this subsection

gl (e) *Completion of required treatment.* An able-bodied adult required under par.
(a) to participate in treatment is considered to have successfully completed
treatment if all applicable components identified under par. (c) are satisfied.

h (f) *Work requirements while in treatment.* An able-bodied adult who is
participating in an employment and training program is exempt from complying
with requirements to work a specified number of hours under s. 49.79 (9) or (10).

(6) EFFECT OF COMPLETION, WITHDRAWAL, OR TERMINATION FROM EMPLOYMENT AND
TRAINING PROGRAM. An able-bodied adult who satisfies any of the following is no
longer subject to s. 49.79 (9) (d) or this section:

(a) The able-bodied adult has completed or voluntarily withdrawn from
participation in an employment and training program.

(b) The able-bodied adult is terminated from an employment and training
program for reasons unrelated to this section.

(c) The able-bodied adult is no longer subject to the requirements of s. 49.79
(10).

(7) CONFIDENTIALITY OF RECORDS. Completed screening questionnaires,
prescriptions, testing results, and treatment records relating to this section may not
be disclosed except for purposes connected with the administration of an
employment and training program or except when disclosure is otherwise authorized
by law or by written consent from the individual who is the subject of the record. The
department may establish administrative, physical, and technical safeguard
procedures administering agencies must follow to assure compliance with state and
federal laws related to public assistance program records, drug testing and
treatment records, and medical records.

(8) **APPEALS.** An adverse decision under this section may be appealed under 7 CFR 273.15 and procedures established in rules promulgated by the division of hearings and appeals.

(9) PAYMENT OF COSTS FOR SCREENING, TESTING, AND TREATMENT. (a) The department shall pay for all costs related to screening able-bodied adults under sub. (3), including the costs of producing, administering, and reviewing screening questionnaires.

(b) The department shall pay for all costs related to testing able-bodied adults under sub. (4), including any costs related to contracting with qualified drug testing vendors under sub. (4) (c).

(c) The department shall pay costs for treatment under sub. (5) that are not covered by the Medical Assistance program under subch. IV of ch. 49 or other private insurance. Payments by the department under this paragraph shall be at rates no higher than the rates paid for comparable services under the Medical Assistance program.

(END)

Nonstat.

(1) DRUG TESTING AND TREATMENT DEADLINE. The department of health services shall implement the substance ^{abuse} screening, testing, and treatment under S.49.791 by no later than October 1, 2019.



State of Wisconsin
2017 - 2018 LEGISLATURE

LRB-6039/P2
TJD:amn

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

1 **AN ACT** *to repeal* 49.79 (9) (d) 1.; *to renumber and amend* 49.79 (9) (d) 2.; and
2 *to create* 49.791 of the statutes; **relating to:** incorporating in statutes the rule
3 regarding drug testing for participants in the FoodShare employment and
4 training program.

Analysis by the Legislative Reference Bureau

This bill incorporates the provisions of chapter DHS 38 of the Wisconsin Administrative Code into the statutes. 2015 Wisconsin Act 55, the biennial budget act for the 2015-16 legislative session, required the Department of Health Services to promulgate rules to develop and implement a screening, testing, and treatment policy and then to screen and test for illegal use of a controlled substance and treat for substance abuse able-bodied adults who seek to participate in the FoodShare program's employment and training program known as FSET. DHS promulgated chapter DHS 38, Wis. Adm. Code, regarding substance abuse screening, testing, and treatment for certain department employment and training programs. The bill incorporates the specifications and requirements of that DHS rule into the statutes and requires implementation of the screening, testing, and treatment by October 1, 2019. In summary, the provisions of the rule and the bill require an agency that is administering FSET to require able-bodied adults who are subject to a work requirement to participate in FoodShare and who seek to participate in FSET to fulfill that work requirement to undergo screening for use of a controlled substance without a prescription, testing for use of a controlled substance in certain

circumstances, and treatment, if applicable, for use of the controlled substance in order to be eligible to participate in FSET.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 49.79 (9) (d) 1. of the statutes is repealed.

2 **SECTION 2.** 49.79 (9) (d) 2. of the statutes is renumbered 49.79 (9) (d) and
3 amended to read:

4 49.79 (9) (d) Subject to the promulgation of rules under subd. 1. s. 49.791, the
5 department shall screen and, if indicated, test and treat participants in an
6 employment and training program under this subsection who are able-bodied adults
7 for illegal use of a controlled substance without a valid prescription for the controlled
8 substance. Eligibility for an able-bodied adult to participate in an employment and
9 training program under this subsection is subject to s. 49.791.

10 **SECTION 3.** 49.791 of the statutes is created to read:

11 **49.791 Substance abuse screening, testing, and treatment for**
12 **employment and training programs. (1) DEFINITIONS.** In this section:

13 (a) "Able-bodied adult" has the meaning given in s. 49.79 (1) (am).

14 (b) "Administering agency" means an administrative agency within the
15 executive branch under ch. 15 or an entity that contracts with the state such as a
16 single county consortia under s. 49.78 (1r), a multicounty consortia under s. 49.78 (1)
17 (br), or a tribal governing body under s. 49.78 (1) (cr).

18 (c) "Confirmation test" means an analytical procedure used to quantify a
19 specific controlled substance or its metabolite in a specimen through a test that is
20 different in scientific principle from that of the initial test procedure and capable of

1 providing the requisite specificity, sensitivity, and quantitative accuracy to
2 positively confirm use of a controlled substance.

3 (d) "Controlled substance" has the meaning given in s. 49.79 (1) (b).

4 (e) "Employment and training program" means the food stamp employment
5 and training program under s. 49.79 (9).

6 (f) "Food stamp program" has the meaning given in s. 49.79 (1) (c).

7 (g) "Medical review officer" means a licensed medical provider who is employed
8 by or providing services under a contract to a qualified drug testing vendor, has
9 knowledge of substance abuse disorders and laboratory testing procedures, and has
10 the necessary training and experience to interpret and evaluate an individual's
11 positive test result in relation to the individual's medical history and valid
12 prescriptions.

13 (h) "Metabolite" means a chemical present in the body when a controlled
14 substance is being broken down through natural metabolic processes that can be
15 detected or measured as a positive indicator that a controlled substance associated
16 with the metabolite has been used.

17 (i) "Prescription" means a current order for a controlled substance that
18 indicates the specific regimen and duration of the order and that is transmitted
19 electronically or in writing by an individual authorized in this state to order the
20 controlled substance.

21 (j) "Qualified drug testing vendor" means a laboratory certified by the federal
22 centers for medical and medicaid services under the federal Clinical Laboratory
23 Improvement Amendments of 1988 to collect a specimen, carry out laboratory
24 analysis of the specimen, store the specimen for a confirmation test if required,
25 complete a confirmation test, and provide review by a medical review officer.

1 (k) "Screening" means completing a questionnaire specified by the department
2 regarding an individual's current and prior use of any controlled substance.

3 (L) "Specimen" means tissue, fluid, or any other product of the human body
4 required to be submitted by an individual for testing under this section.

5 (m) "Trauma-informed" means operating under the understanding of the
6 science of adverse childhood experiences, toxic stress, trauma, and resilience,
7 incorporating that understanding into organizational culture, policies, programs,
8 and practices, and adhering to trauma-informed principles such as safety,
9 trustworthiness and transparency, peer support, collaboration and mutuality,
10 empowerment, and cultural, historical, and gender issue recognition.

11 (n) "Treatment" means any service that is conducted under clinical supervision
12 to assist an individual through the process of recovery from controlled substance
13 abuse, including screening, application of approved placement criteria, intake,
14 orientation, assessment, individualized treatment planning, intervention,
15 individual or group and family counseling, referral, discharge planning, after care
16 or continuing care, record keeping, consultation with other professionals regarding
17 treatment services, recovery and case management, crisis intervention, education,
18 employment, and problem resolution in life skills functioning.

19 (o) "Treatment program" means a program certified by the department to
20 provide treatment for controlled substance abuse as a medically managed inpatient
21 service, a medically monitored treatment service, a day treatment service, an
22 outpatient treatment service, a transitional residential treatment service, or a
23 narcotic treatment service for opiate addiction or, as approved by the department,
24 psychosocial rehabilitation services.

1 (p) "Treatment provider" means a provider of treatment for controlled
2 substance abuse certified by the department, a provider certified under s. 440.88, or
3 a licensed professional who meets criteria established by the department of safety
4 and professional services.

5 (2) NOTICE OF REQUIREMENT. An administering agency shall provide
6 information in a format approved by the department to any individual who expresses
7 interest in or is referred to participate in an employment and training program to
8 explain the requirement for participants in certain employment and training
9 programs to undergo screening, testing, and treatment for abuse of controlled
10 substances.

11 (3) ADMINISTERING AND EVALUATING A CONTROLLED SUBSTANCE ABUSE SCREENING
12 QUESTIONNAIRE. (a) At the time of application and at annual redetermination for
13 eligibility in the food stamp program, an administering agency shall administer to
14 any able-bodied adult who is subject to the work requirement under s. 49.79 (10) (a)
15 and intends on meeting the work requirement through participation in the
16 employment and training program a controlled substance abuse screening
17 questionnaire approved by the department, which may include questions related to
18 controlled substance abuse-related criminal background and controlled substance
19 abuse. The administering agency shall determine whether answers to the controlled
20 substance abuse screening questionnaire indicate possible use of a controlled
21 substance without a valid prescription by the able-bodied adult.

22 (b) 1. An able-bodied adult who is administered a controlled substance abuse
23 screening questionnaire under par. (a) shall answer all questions on the screening
24 questionnaire, sign and date the questionnaire, and submit the questionnaire to the
25 administering agency.

1 2. If the able-bodied adult indicates on the screening questionnaire submitted
2 under subd. 1. the prescribed use of a controlled substance, the able-bodied adult
3 shall provide evidence of the valid prescription to the administering agency.

4 (c) An able-bodied adult who is administered a controlled substance abuse
5 screening questionnaire under par. (a) and who fails to comply with the requirements
6 under par. (b) is not eligible to participate in the employment and training program,
7 and the administering agency may not refer the individual to participate in the
8 employment and training program. An able-bodied adult who is denied eligibility
9 for participation in the employment and training program for failure to complete the
10 requirements under par. (b) may complete the requirements under par. (b) at any
11 time while eligible for the food stamp program.

12 (d) An able-bodied adult who completes a controlled substance abuse screening
13 questionnaire under this subsection and whose answers to the screening
14 questionnaire do not indicate possible abuse of a controlled substance has satisfied
15 the requirements of this section and may participate in an employment and training
16 program subject to this section.

17 (4) TESTING FOR USE OF A CONTROLLED SUBSTANCE REQUIRED. (a) *Individuals*
18 *required to undergo testing; exception.* 1. Except as provided in subd. 2., an
19 administering agency shall require an able-bodied adult whose answers on the
20 controlled substance abuse screening questionnaire submitted under sub. (3)
21 indicate possible use of a controlled substance without a prescription to undergo a
22 test for the use of a controlled substance.

23 2. An administering agency may not require an able-bodied adult whose
24 answers on the controlled substance abuse screening questionnaire submitted under
25 sub. (3) indicate possible use of a controlled substance and who also indicates

1 readiness to enter treatment for controlled substance abuse to undergo a test for the
2 use of a controlled substance.

3 (b) *Nature of testing required.* A test for use of a controlled substance under
4 this subsection consists of laboratory analysis of a specimen collected from an
5 able-bodied adult described in par. (a) in a manner specified by the department that
6 is consistent with guidelines from the federal department of health and human
7 services by a qualified drug testing vendor or a provider approved by the department.
8 The qualified drug testing vendor or other provider shall analyze the specimen for
9 the presence of controlled substances specified by the department.

10 (c) *Contracts for testing services.* 1. The administering agency, subject to the
11 department's approval, may contract with a trauma-informed qualified drug testing
12 vendor to collect a specimen, carry out laboratory analysis of the specimen, store the
13 specimen for confirmatory testing if required, complete confirmatory testing, provide
14 review by a medical review officer, and document and report test results to the
15 administering agency.

16 2. The department may require administering agencies to use a specific drug
17 testing service procured through state contracting if the department determines that
18 volume discounts or other preferential pricing terms may be achieved through a
19 statewide contract.

20 (d) *Effects of refusal to submit to drug test.* 1. An able-bodied adult who is
21 required to undergo a test for the use of a controlled substance under par. (a) but who
22 refuses to submit to a drug test by doing any of the following is ineligible to
23 participate in the employment and training program until the individual agrees to
24 be tested for use of a controlled substance and test results have been reported:

25 a. Failing or refusing to appear for a scheduled drug test without good cause.

1 b. Failing or refusing to complete a form or release of information required for
2 testing, including any form or release required by the qualified drug testing vendor
3 to permit the vendor to report test results to the administering agency or
4 department.

5 c. Failing or refusing to provide a valid specimen for testing.

6 d. Failing or refusing to provide verification of identity to the testing vendor.

7 2. The administering agency may direct an able-bodied adult who initially
8 refused to submit to a drug test under subd. 1. and subsequently agrees to submit
9 to a test to undergo drug testing on a random basis at any time within 10 business
10 days after the able-bodied adult agrees to submit to a test.

11 (e) *Confirmation test required.* If an able-bodied adult tests positive for the use
12 of a controlled substance, the qualified drug testing vendor shall perform a
13 confirmation test using the same specimen obtained for the initial drug test. The
14 vendor's medical review officer who is responsible for determining the presence of a
15 controlled substance under par. (b) shall interpret all drug test results that are not
16 negative.

17 (f) *Accepting test results from other programs.* For purposes of this section, an
18 administering agency may use results of a drug test performed by the administering
19 agency for the purpose of eligibility for another state program, including a work
20 experience program under s. 49.162, 49.36, or 108.133, performed at the request of
21 the department of corrections, or performed by other drug testing providers as
22 approved by the department to determine whether to refer an able-bodied adult to
23 treatment if all of the following apply:

24 1. The test results are provided directly to the administering agency.

1 2. The test results include tests for all controlled substances required by the
2 department to be tested under this section.

3 3. The test occurred within 90 days before the results are provided to the
4 administering agency.

5 (g) *Effect of a negative test.* An able-bodied adult who undergoes a test for use
6 of a controlled substance under this subsection and tests negative for use of a
7 controlled substance or who tests positive for use of a controlled substance but
8 provides to the administering agency a prescription for each controlled substance for
9 which the adult tests positive is not prohibited from participating in an employment
10 and training program.

11 (h) *Effect of a positive test.* An able-bodied adult who undergoes a test for use
12 of a controlled substance under this subsection, whose test results are positive, and
13 who does not provide evidence of a prescription for the controlled substance, as
14 determined by the qualified drug testing vendor's medical review officer, is required
15 to participate in treatment under sub. (5) to participate in an employment and
16 training program.

17 (5) PARTICIPATION IN TREATMENT REQUIRED. (a) *Individuals required to*
18 *participate in treatment.* An able-bodied adult who is described under sub. (4) (a)
19 or (h) is required to participate in trauma-informed treatment to be eligible to
20 participate in an employment and training program.

21 (b) *Referral for treatment; monitoring.* The applicable administering agency
22 shall provide to every able-bodied adult who is required to participate in treatment
23 under par. (a) information about treatment programs and county-specific
24 assessment and enrollment activities required for entry into treatment. The
25 applicable administering agency shall monitor the able-bodied adult's progress in

1 entering and completing treatment and the results of random testing for the use of
2 a controlled substance carried out during and at the conclusion of treatment.

3 (c) *Evaluation and assessment.* A treatment provider shall conduct a
4 trauma-informed substance abuse evaluation and assessment of each able-bodied
5 adult and take any of the following actions, as appropriate, based on the evaluation
6 and assessment:

7 1. If the treatment provider determines the able-bodied adult does not need
8 treatment, notify the administering agency that the able-bodied adult does not need
9 treatment.

10 2. If the treatment provider determines the able-bodied adult is in need of
11 treatment, refer the individual to an appropriate treatment program to begin
12 treatment and notify the administering agency of the referral and the expected start
13 date and duration of treatment.

14 3. If a treatment provider determines the able-bodied adult is in need of
15 treatment but is unable to refer the adult because there is a waiting list for
16 enrollment, enter the able-bodied adult on the waiting list and notify the
17 administering agency of the date the adult is expected to be enrolled.

18 (d) *Eligibility when treatment not needed or on waiting list.* 1. An able-bodied
19 adult described in par. (c) 1. is determined to have satisfied the requirements of this
20 section and is eligible under this section to participate in an employment and
21 training program.

22 2. An able-bodied adult who is on a waiting list for enrollment in an
23 appropriate treatment program under par. (c) 3. shall continue to take all necessary
24 steps to continue seeking enrollment in the appropriate treatment program. The
25 able-bodied adult is eligible under this section to participate in an employment and

1 training program while on the waiting list if the adult is not eligible for immediate
2 enrollment in another appropriate treatment program.

3 (e) *Satisfying treatment requirement through another program.* An
4 administering agency shall accept as satisfying the requirements of this subsection
5 participation in any treatment program. The able-bodied adult satisfying the
6 requirements of this subsection by participating in another treatment program shall
7 execute a release of information to allow the administering agency to obtain
8 verification of successful participation in that treatment program.

9 (f) *Effects of refusal to submit to treatment.* 1. An able-bodied adult who is
10 required to participate in treatment under par. (a) but who refuses to participate in
11 treatment by doing any of the following is ineligible to participate in the employment
12 and training program until the individual agrees to participate in treatment while
13 still eligible for the food stamp program:

14 a. Failing or refusing to complete a form or release required for treatment
15 program administration, including a form or release required by the treatment
16 provider in order to share information with the administering agency about the
17 able-bodied adult's participation in treatment.

18 b. Failing or refusing to participate in a controlled substance test required by
19 the treatment provider or the administering agency during the course of required
20 treatment, including any random controlled substance testing directed by the
21 treatment provider or administering agency.

22 c. Failing or refusing to meet attendance or participation requirements
23 established by the treatment provider.

24 d. Failing or refusing to complete a substance abuse assessment.

1 (g) *Completion of required treatment.* An able-bodied adult required under par.
2 (a) to participate in treatment is considered to have successfully completed
3 treatment if all applicable components identified under par. (c) are satisfied.

4 (h) *Work requirements while in treatment.* An able-bodied adult who is
5 participating in an employment and training program is exempt from complying
6 with requirements to work a specified number of hours under s. 49.79 (9) or (10) while
7 participating in treatment under this subsection.

8 **(6) EFFECT OF COMPLETION, WITHDRAWAL, OR TERMINATION FROM EMPLOYMENT AND**
9 **TRAINING PROGRAM.** An able-bodied adult who satisfies any of the following is no
10 longer subject to s. 49.79 (9) (d) or this section:

11 (a) The able-bodied adult has completed or voluntarily withdrawn from
12 participation in an employment and training program.

13 (b) The able-bodied adult is terminated from an employment and training
14 program for reasons unrelated to this section.

15 (c) The able-bodied adult is no longer subject to the requirements of s. 49.79
16 (10).

17 **(7) CONFIDENTIALITY OF RECORDS.** Completed screening questionnaires,
18 prescriptions, testing results, and treatment records relating to this section may not
19 be disclosed except for purposes connected with the administration of an
20 employment and training program or except when disclosure is otherwise authorized
21 by law or by written consent from the individual who is the subject of the record. The
22 department may establish administrative, physical, and technical safeguard
23 procedures administering agencies must follow to assure compliance with state and
24 federal laws related to public assistance program records, drug testing and
25 treatment records, and medical records.

(8) APPEALS. An adverse decision under this section may be appealed under 7 CFR 273.15 and procedures established in rules promulgated by the division of hearings and appeals.

(9) PAYMENT OF COSTS FOR SCREENING, TESTING, AND TREATMENT. (a) The department shall pay for all costs related to screening able-bodied adults under sub. (3), including the costs of producing, administering, and reviewing screening questionnaires.

(b) The department shall pay for all costs related to testing able-bodied adults under sub. (4), including any costs related to contracting with qualified drug testing vendors under sub. (4) (c).

(c) The department shall pay costs for treatment under sub. (5) that are not covered by the Medical Assistance program under subch. IV of ch. 49 or other private insurance. Payments by the department under this paragraph shall be at rates no higher than the rates paid for comparable services under the Medical Assistance program.

SECTION 4. Nonstatutory provisions.

(1) DRUG TESTING AND TREATMENT DEADLINE. The department of health services shall implement the substance abuse screening, testing, and treatment under s. 49.791 by no later than October 1, 2019.

(END)